

CONGRESSIONAL TESTIMONY

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Statement

of

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on behalf of**

**American Physical Therapy Association
and its
Private Practice Section**

**United States House of Representatives
Committee on Small Business**

**Hearing on “Medicare Physician Fee Cuts: Can
Small Practices Survive.”**

**May 8, 2008
10:00 am**

Chairwoman Velázquez, Ranking Member Chabot, and Members of the House Committee on Small Business:

Thank you for the opportunity to address the House Committee on Small Business and provide a perspective on the pending cut to provider payments under the Medicare physician fee schedule. If Congress does not act by July 1st, payments under the Medicare physician fee schedule will be cut by 10.6%. This would begin a series of payments reductions under the Medicare physician fee schedule with an additional 5% cut pending on January 1, 2009 and an overall reduction in payment to health care providers of 40% by 2016. Surviving this degree of payment reductions is unsustainable for small business in the health care sector, including those in physical therapy.

Today, I represent the 72,000 members of the American Physical Therapy Association (APTA) and the 4,200 members of its Private Practice Section. APTA's goal is to foster advancements in physical therapy practice, education, and research. Payment policy is critical to the success of this mission. The goal of APTA's Private Practice Section is to advance small business ownership among physical therapists. Physical therapists are leaders in the rehabilitation of individuals who have impairments, functional limitations, and disabilities that limit their mobility and ability to fully function and participate in their activities of daily living, jobs, and communities.

The impact of payment cuts under the Medicare physician fee schedule is unique for physical therapist small businesses, and has significant ramifications on the ability to serve the rehabilitation needs of our seniors and persons with disabilities. These Medicare beneficiaries are individuals who have suffered from stroke, had joint replacements, or chronic diseases that impair their ability to move, walk, and perform their daily tasks. Physical therapist small businesses address these beneficiaries' health care needs throughout the United States, and contribute to the health status of our country, including its economic health.

Today, I'd like to provide background on physical therapist small business, present three points to show the impact of Medicare payment cuts, and conclude by answering the question at hand, "Can small business survive in this environment?" Without doubt, the pending cuts to the Medicare physician fee schedule will have a detrimental impact on physical therapists as small business owners, the patients we serve, and the overall quality of the health care for our patients.

Physical Therapist Small Business: A growing portion of service delivery in outpatient physical therapy.

Beginning in 1971, physical therapists have been able to independently bill the Medicare program for their services. This was a major catalyst to small business ownership in physical therapy. Over the past thirty-seven years, physical therapist practice has transformed from an ancillary service to an independent health care profession, due in part from the ability of physical therapists in independent practices serving patients in their communities in a cost effective outpatient environment. In 1992, payment for

services provided under the Medicare outpatient Part B benefit by physical therapists in private practice (PTPP's), as well as physicians and other non-physician qualified providers in office settings, transitioned from being paid under a reasonable charge payment mechanism of actual, customary and prevailing charges to one based on the Resource Based Relative Value Scale (RBRVS). Private practice physical therapists who became providers under the Part B benefit and organized their private practice as a rehabilitation agency (and therefore were able to bill for other rehabilitation services, including speech language pathology services) transitioned from cost-based payments to payment under the Medicare physician fee schedule in 1999, as part of the Balanced Budget Act.

Today there are over 172,000 licensed physical therapists practicing in the United States. Private practices, the small businesses in physical therapy, are estimated to be the practice setting of over 25% of the total workforce or 43,000 licensed physical therapists. A recent study by Medicare showed a marked increase in physical therapists in private practice (PTPPs) from 11,620 PTPP providers in 2000 to 41,980 PTPP providers in 2006. The membership profile of the APTA shows that 41.5% of its members identify their practice setting as private practice or outpatient group practice. A vast majority of these practices are small businesses.

A recent Center for Medicare and Medicaid Services (CMS) study indicated that 8.5% of Medicare beneficiaries utilize outpatient physical therapy services, resulting in 3.9 million patients per year in 2006. Medicare expenditures for outpatient physical therapy services were just over 3 billion dollars in 2006. Of these expenditures, 35% of these expenditures were for physical therapists in private practice, representing the largest single setting designation under Medicare. Of interest, the number of beneficiaries utilizing physical therapy services under Medicare has grown by 3.5% while the total expenditures has decreased 4.7% from 2004 to 2006. Physical therapy continues to be a critical need for beneficiaries and an efficient and effective service to address the health care needs of the growing Medicare population.

The physical therapist small business that I own with my partner in the Greater Cincinnati, Ohio area currently employs 24 individuals in 3 clinics. We serve approximately 180 patients per week with orthopedic and musculoskeletal impairments. Our goal is to return these individuals to the highest level of function and productivity in their homes and communities. Physical therapy following injury, impairment, and disability is a major contributor to keeping our citizens healthy.

Our clinic has significantly reduced costs in order to be able to address the static and more often decreasing reimbursement environment. My partner and I have personally reduced our salaries 50% and eliminated our advertising budget. In addition, we've seen significant increases in administrative costs, such as energy costs, postage, and fuel surcharges from our suppliers. As members of this committee well know, the margins in small business are tight. With rising costs in the operations of business along with a decrease in the revenues due to payment and policy challenges, small businesses in physical therapy are struggling to survive. As Congress has grappled with the pending

Medicare physician fee schedule cuts, it is important to point out that these cuts have a detrimental impact beyond the physician practice, and ripple throughout the entire health care delivery system, including all providers that are paid under the fee schedule. Without significant reform to the Medicare payment system for all health care providers, the ability for these providers to survive is limited, at best.

The Impact of Medicare Fee Schedule Cuts on Physical Therapist Small Business

The impact of pending cuts to the Medicare physician fee schedule is significant to physical therapist small business. APTA supports efforts to avoid the 10.6% cut in payments under the Medicare physician fee schedule and to replace the flawed Sustainable Growth Rate (SGR) formula with a more accurate indicator of health care inflation, such as the Medicare Economic Index. The pending cuts are unsustainable and would have significant ramifications on patient access, the delivery of health care services, and the viability of the small businesses that are so critical to meeting patient needs and making the health care system work on a daily basis.

As one of the non-physician providers that bill the Medicare physician fee schedule, APTA believes it is important for policymakers to understand the full impact of the cuts on the health care system and how these cuts are detrimental to innovative and independent small businesses in health care. We believe physical therapist small businesses are a unique segment of the health care delivery system under Medicare. The impact of the pending cuts and their impact on physical therapist small businesses can be summarized by three points.

First, the pending payment cuts under the Medicare physician fee schedule have a compounding effect in physical therapy. On July 1, 2008, if Congress does not act, not only will physical therapist small businesses be subject to a 10.6% reduction in payment, they will also be subject to an \$1,810 per beneficiary per year therapy cap on outpatient services. This arbitrary therapy cap would limit patient access to needed physical therapy by not considering the patients' condition, diagnosis, or other contributing factors.

This cap will not save the Medicare program money. It would only shift the cost of care away from outpatient facilities and small business to more costly settings. Small businesses in physical therapy will be impacted as the therapy cap policy includes an exemption for hospital outpatient departments. This exemption will do nothing more than encourage patients to seek services in the hospital setting to avoid having to change providers over the course of their physical therapy treatment when they reach the cap or stop treatment all together.

APTA recommends the passage of the *Medicare Access to Rehabilitation Services Act (HR 748)*, legislation to repeal of the therapy caps, currently supported by a bipartisan majority of the US House of Representatives, or an extension of the current exceptions process that maintains access to clinically appropriate physical therapy services under Medicare. Payment cuts along with an arbitrary cap on therapy services are a cut upon a

cut and would make the viability of physical therapist small businesses a significant challenge.

Cuts to the Medicare physician fee schedule have a significant impact throughout the reimbursement environment. The Medicaid program, state workers' compensation programs and many third party payers utilize the Medicare fee schedule to base their reimbursement rates. The implementation of a 10.6% cut on July 1, 2008 would only lead to cuts throughout the multiple payers that reimburse health care providers for the services they provide patients.

Second, physical therapists in private practice have significant limitations on how patients may access their services and the marketplace. Currently, Medicare requires that the patient be under the care of a physician as a prerequisite for payment of therapy services, along with a physician certification of the therapy plan of care. If the payment cuts go into effect and physicians stop taking Medicare patients or limit the accessibility or availability of physician services, then access to physical therapy services will be impacted as a ripple effect. The Centers for Medicare and Medicaid Services has continued to reduce the patient burden on access to physical therapists, but legislation is needed to remove this requirement to ensure access to physical therapist small businesses as pending payment cuts begin to limit access to health care providers.

APTA advocates for passage of the *Medicare Patient Access to Physical Therapist Act (HR 1552)* as one strategy to provide relief to physical therapist small businesses. This legislation would allow patient access to physical therapists that bill the Medicare physician fee schedule as authorized under state law and has more than 130 bipartisan cosponsors.

In addition, physical therapist small businesses are struggling due to the proliferation of situations where referral sources are directing patients to clinics in which they have a financial relationship. This puts physical therapist small businesses at a competitive disadvantage in the marketplace as patients can not choose their physical therapy provider due to the referral requirement. This is particularly true since, under the current Medicare requirements, the patient must be under the care of a physician. As physician practices struggle with the payment cut, the incentive to develop additional sources of revenue is increased.

The push to develop additional revenue sources squeezes independent physical therapist small business' ability to compete in the marketplace and provide care to the patients that need physical therapy services. APTA advocates for stronger enforcement of self-referral provisions in federal law, and in addition the need to look at the abuse in this area and provide recommendations for additional policy changes to ensure the integrity of health care service delivery to the beneficiary.

Third, physical therapists in small businesses have significant administrative burdens that add to the cost of providing health care. These administrative burdens complicate physical therapist practice and direct the provider away from patient care.

Physical therapists in private practice under the Medicare program have some of the most restrictive policies, including supervision requirements for physical therapist assistants that are stricter than inpatient practice settings where the patients are arguably more critical and medically unstable. These policy inconsistencies just do not make sense, and add to the limited ability to sustain physical therapist small business over the long term.

APTA also supports the elimination of setting-specific regulations that encumber physical therapists with inconsistent requirements and administrative burdens, and advocates for the adoption of a consistent set of standards to the extent possible for physical therapy regardless of its site of delivery. Regulations should be adopted for the benefit and protection of the patient and should not adversely impact the small business by virtue of the setting in which care is delivered. In addition, physical therapists in private practice are saddled with requirements that limit their flexibility. Physical therapists do not have the ability to opt out of the Medicare program, privately contract, nor do they have locum tenens authority like other Medicare providers, such as physicians, dentists, or podiatrists.

The compounding effect of payment cuts under the Medicare physician fee schedule along with limitations on patient access, a competitive marketplace, and regulatory burden makes the 10.6% cut just the tip of the iceberg for physical therapy small businesses. Congress, CMS, and health care providers that serve Medicare beneficiaries must move beyond this issue of temporary extensions of payment reprieves and look at the health of the Medicare physician fee schedule for the long-term.

APTA is investigating alternative models of reimbursement for physical therapist services that would be based on the reporting of severity of the patients' condition, their rehabilitation needs, and the complexity of physical therapist's evaluation and intervention to meet the appropriate functional outcome for the individual. This assessment-based model that would be designed to drive the payment system is consistent with the direction CMS is headed in its transformation of payment from volume of services to a quality-based, patient-centered payment system. This potential payment system could involve elements of a fee-for-service payment methodology, or could address payment by bundling services by visit or episodes of care. What is essential is that any payment system be based on the individual health care professional's ability to bill appropriately for their services and then be held accountable for the services they deliver.

APTA also supports the transition to quality reporting under the Medicare physician fee schedule and compliments the Centers for Medicare and Medicaid Services for their efforts to work with health care providers to ensure this program represents the diverse services and professions that provide care to seniors and persons with disabilities. APTA believes the biggest barrier in making the transition to quality is the looming payment cuts and the lack of incentives for investing in the quality reporting infrastructure.

We also hope that the transition to new or alternative payment systems will increase the opportunity for small business ownership in health care and with that, APTA strongly

advocates for independent billing authority in all outpatient settings. A payment system that enhances accountability and best represents the quality of health care services provided is a long-term solution to the flawed SGR formula and we encourage Congress to continue to take incremental steps in this direction.

Can Physical Therapists in Small Businesses Survive?

Despite the challenging environment, physical therapist small businesses must find strategies to survive. The demands for high quality rehabilitation services by physical therapists will only increase as baby boomers age and people seek the services of qualified physical therapists to keep active and productive. Payments under the Medicare physician fee schedule, at a minimum, must keep pace with inflation. Yet simply keeping pace with inflation at this point in time would only keep the situation from becoming more dire.

We also need to investigate new opportunities to enhance the payment system to improve quality of care and provider accountability. In addition, reforming the regulations under the Medicare physician fee schedule would assist in alleviating some of the payment pressures by reducing administrative burdens, seeking legislative changes to improve access, and reducing incentives to utilize physical therapy as a revenue source by non-physical therapists. These are all essential elements to assist physical therapist small businesses in surviving one of the most challenging marketplaces, the health care delivery system.

Thriving in this payment environment is a challenge for small businesses in health care, including those in physical therapy. The physical therapist small business climate in the Greater Cincinnati, Ohio area has seen this first hand. In the past three years, 14 clinics have closed their office doors due to the negative pressure on payment in physical therapy along with obstacles which do not allow them to be competitive in a closed health care market. This has created an unstable environment. In addition, our reimbursement on average has remained static due to the annual freeze or minor update in the Medicare physician fee schedule, despite our annual increases in expenses, including salaries, overhead costs, and the cost of health insurance. The health care delivery system needs physical therapist small businesses to meet patients' rehabilitation needs. If those needs are unmet, then health care costs will be transferred to more intensive, costly environments, compounding the existing crisis in health care spending. Physical therapist small businesses are a cost-effective, efficient delivery model for physical therapy services, and efforts to maintain and enhance this setting are essential.

In closing, I, on behalf of the 72,000 members of the American Physical Therapy Association and its Private Practice Section, compliment the House Committee on Small Business and its leadership for holding this hearing. I hope the opportunity to explain the impact of the Medicare physician fee schedule cuts on one sector of the health care market was beneficial to the Committee and its role in ensuring the viability and success of small businesses. Thank you for your time and dedication to these issues.